UNITED NATIONS

A S

General Assembly
Security Council

Distr.
GENERAL

A/50/959
S/1996/370
23 May 1996
ENGLISH
ORIGINAL: SPANISH

GENERAL ASSEMBLY
Fiftieth session
Agenda item 140
UNITED NATIONS DECADE OF
INTERNATIONAL LAW

SECURITY COUNCIL
Fifty-first year

Letter dated 22 May 1996 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General

I have the honour to request that the attached statement by the Permanent Representative of Cuba to the United Nations concerning the revocation by the United States Federal Aviation Administration of the pilot's licence of José Basulto, head of the organization Brothers to the Rescue (see annex), be circulated as a document of the fiftieth session of the General Assembly under agenda item 140, and of the Security Council.

(Signed) Bruno RODRÍGUEZ PARRILLA
Ambassador
Permanent Representative

96-12970 (E) 240596 240596 250596

/...

ANNEX

[Original: Spanish and English]

Statement dated 21 May 1996 by the Permanent Representative of Cuba to the United Nations concerning the revocation of the pilot's licence of the head of the organization Brothers to the Rescue

Is this a sensible decision to stop the abuse of civil aviation or a political manoeuvre?

On 16 May 1996, the Federal Aviation Administration of the United States of America (FAA) issued an emergency order to revoke the pilot's licence of José Basulto, head of the organization Brothers to the Rescue, on the basis of "evidence of previous violations of Federal Aviation Administration regulations and of two unauthorized operations related to incursions into Cuban airspace by Mr. José Basulto on July 13, 1995, and on February 24, 1996".

The above-mentioned order also indicates that "José Basulto ignored numerous warnings concerning his actions from the FAA and the State Department of the United States".

The authorities of the Republic of Cuba have welcomed with interest the information on the FAA order to revoke the pilot's licence of José Basulto, although this order is a late and insufficient measure adopted by the FAA and the United States Government.

Some months ago, the adoption of a similar order would have been consistent with FAA regulations and United States legislation and would have prevented violations of Cuban airspace, thereby averting the incidents of 24 February.

It is noteworthy that the emergency order to cease and desist and the order of compliance issued by the United States FAA in March 1996 clearly stated the responsibility of the organization Brothers to the Rescue for the violation of the norms of civil aviation during the illegal flights, which operated and continue to operate out of United States territory, as confirmed by the perpetrators themselves in several public statements. However, the recent executive order to revoke the pilot's licence of José Basulto does not include any measure against the rest of the violators, who are also members of this organization.

Unfortunately, this last executive order was issued after 27 violations of Cuban airspace over a period of two years, whereas enough evidence and strong reasons existed to have taken similar or other kinds of action after the first violation, which could have prevented the occurrence, with absolute impunity, of numerous violations during this period.

If the FAA investigation launched in July 1995 - already behind schedule - had not been incredibly slow, taking more than 10 months, the order to revoke the pilot's licence which has now been issued by the FAA would have been an efficient action and a credible response on the part of the United States

Government and its aviation authorities. It was not necessary to conduct a thorough investigation, since such violations had been publicly recognized by their perpetrators and discussed on television, as stated by the FAA itself in the order it issued last March.

The late order issued by the FAA implies that the United States realizes that José Basulto repeatedly violated the laws of the United States and of the Republic of Cuba during his numerous illegal incursions into Cuban airspace.

It also proves that the United States federal authorities and aviation authorities have been fully aware, from the very beginning, of the illegal activities and violations of the purposes, principles and goals of international civil aviation by José Basulto and other members of the terrorist organization Brothers to the Rescue operating out of United States territory.

It corroborates the fact that José Basulto, together with other members of the above-mentioned terrorist organization, were allowed to fly on two occasions on 24 February 1996, despite being under federal investigation, and pending a federal indictment, after the incident, of 13 July 1995, as stated by the United States Government, and at risk of illegally entering Cuban airspace in spite of the repeated information and clear warnings issued by the Cuban authorities to this effect.

This FAA order to revoke the pilot's licence of José Basulto makes us realize the responsibility of the FAA and the United States Government in the incidents of 24 February 1996.

The order to revoke the pilot's licence demonstrates that the regrettable loss of four human lives during the incidents of 24 February 1996 is the absolute responsibility of José Basulto in his position as head of the terrorist organization Brothers to the Rescue, owing to his careless and reckless behaviour which placed at risk the lives and property of others; and of the United States Government and its aviation authorities, because of their failure to prevent, by taking timely measures similar to the ones that have been announced or others, the occurrence of illegal flights over the territory of Cuba.

More than once, the Government of Cuba has officially warned José Basulto and his accomplices and the United States Government about how strongly it would respond, in accordance with the means at its disposal, to any further violations of Cuba's territorial integrity.

The repeated violations of Cuban airspace and the climate of impunity they have enjoyed so far are an irrefutable proof of the violation, from the territory of the United States of America, of the purposes, principles and goals of international civil aviation, in particular, article 3 bis of the Chicago Convention of 1994, on non-compliance with the legal obligations of the State where the aircraft is registered.

These violations are an irrefutable proof of the deliberate abuse, by a terrorist organization, of the rules of international civil aviation, whose harmonic development, compatible with the sovereignty and relations of respect

and cooperation of sovereign States, is one of the principal objectives of the existence and the work of the International Civil Aviation Organization (ICAO).

The interim report of the ICAO team on the progress of the investigation stated that "by 30 March 1996, the authorities in Cuba had complied fully with all requests by the team for interviews, statements, civil and military data, documents and charts, as well as communications recordings and transcripts".

The ICAO team asked the Government of the United States to present seven pieces of evidence as part of the information and additional materials requested. The failure by the United States to produce the seven pieces of evidence in a timely manner forced the ICAO Council to postpone the submission of the final report on the investigation and the consideration of the matter for another month, extending the time stipulated in the resolution adopted by this organization.

Given the fact that the evidence requested from the United States by the ICAO team is part of the technical evidence obtained during the occurrence of the incident, the delay in the presentation of said evidence by the aviation authorities and the Government of the United States is worthy of note.

It is also interesting that among the pieces of evidence requested there is "information on the status of enforcement actions in progress related to previous incursions into Cuban airspace".

The adoption of an order to revoke the pilot's licence of José Basulto and the members of his organization by the FAA some months ago would have been credible and would have been part, at the time, of the information requested by the ICAO team.

Only time and the future behaviour of the United States will tell how much good intention, coherence and seriousness this measure demonstrates with regard to compliance with the international juridical obligations of the United States, or how much political manoeuvring is going on, only a few weeks away from the ICAO Council meeting to consider this issue.

As long as the United States authorities do not impose a complete ban on these illegal flights, and as long as effective steps are not taken to prevent them, the United States will be completely responsible for any future incident; it will be violating the most elemental norms of international law and international civil aviation and will continue to fail to comply, in particular, with the most relevant provisions of the Chicago Convention and the Montreal Protocol. Meanwhile, it will be within the competence of ICAO to recommend and adopt all necessary measures to prevent, avoid and condemn such cases of unlawful use and illegal and premeditated abuse of civil aviation.